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COVERALL NORTH AMERICA, INC., CNA
HOLDING CORPORATION and TED ELLIOTT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SABRINA LAGUNA, an individual;
CARLOS ACEVEDO, an individual;
TERESA SALAS, an individual; and
ROES 3-50 on behalf of themselves and in
a representative capacity for all others
similarly situated.

Plaintiffs.

v.

COVERALL NORTH AMERICA, INC.,
a Delaware corporation; ALLIED
CAPITAL CORPORATION, a Maryland
corporation; ARES CAPITAL
CORPORATION, a Maryland corporation;
CNA HOLDING CORPORATION, a
Delaware Corporation; TED ELLIOT, an
individual; DOES 5-50 inclusive,

Defendants.

CASE NO. 3:09-CV-02131-JM (BGS)

*(Assigned to Hon. Jeffrey T. Miller and
Hon. Bernard G. Skomal)*

**DEFENDANT TED ELLIOTT'S NOTICE
OF MOTION TO DISMISS PLAINTIFFS'
THIRD AMENDED COMPLAINT**

[Filed Concurrently with Memorandum of Points and Authorities In Support of Motion to Dismiss; Declaration of Ted Elliott]

Hearing:

Date: January 21, 2011
Time: 1:30 p.m.
Dept.: 16

Complaint Filed: August 3, 2008
Discovery Cut-Off: February 1, 2011
Trial Date: September 26, 2011

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 21, 2011, at 1:30 p.m., or as soon thereafter as
3 the matter may be heard, in Courtroom 16 of the above-entitled Court, located at 940 Front Street,
4 San Diego, California, 92101, Defendant Ted Elliott will and hereby does move this Court,
5 pursuant to Federal Rules of Civil Procedure 9(b), 12(b)(2) and 12(b)(6), to dismiss all causes of
6 action contained in the Third Amended Complaint of Plaintiffs Sabrina Laguna, Teresa Salas and
7 Carlos Acevedo (collectively, "Plaintiffs"). Mr. Elliott brings this Motion on the following
8 grounds:

- 9 (1) This Court lacks personal jurisdiction over Mr. Elliott;
10 (2) Plaintiffs fail to allege any wrongful conduct attributable to Mr. Elliott with
11 specificity;
12 (3) Plaintiffs fail to state a claim for which relief can be granted on any of their
13 misleading advertising claim;
14 (4) Plaintiffs fail to allege all fraud-based claims with particularity; and
15 (5) Plaintiffs fail to allege their joint employer and alter ego theories with specificity.

16 Mr. Elliott's Motion is based upon this Notice of Motion, the Memorandum of Points and
17 Authorities, the Declaration of Ted Elliott, and all pleadings and papers on file with the Court in
18 this action, and upon such oral and written evidence as may be presented at the hearing of this
19 Motion.

20 Dated: December 20, 2010

DLA PIPER LLP (US)

21 By /s/ Nancy Nguyen Sims

22 JEFFREY A. ROSENFELD
23 NANCY NGUYEN SIMS
24 Attorneys for Defendants
COVERALL NORTH AMERICA, INC., CNA
HOLDING CORPORATION and TED
ELLIOTT

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DLA Piper LLP (US), 1999 Avenue of the Stars, Suite 400, Los Angeles, California 90067-6023.

On December 20, 2010, I electronically filed the foregoing document:

**DEFENDANT TED ELLIOTT'S NOTICE OF MOTION TO DISMISS
PLAINTIFFS' THIRD AMENDED COMPLAINT**

E-FILING:

By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

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*Attorneys for Allied Capital Corporation and
Ares Capital*

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on December 20, 2010, at Los Angeles, California.


Patti Lavine